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TRANSCRIPT OF RECORD.

Supreme Court of the United States

October Term, 1951.

No. 20

THE UNITED STATES OF AMERICA,
Appellant,

vs.

LOUISE VIRGINIA SMITH.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS.

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CAPTION 1

[Caption Omitted]

IN DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS

SAN ANTONIO DIVISION

PRESENTMENT

[Filed Oct. 2, 1950]

2 Now, on this the 2nd day of October, A. D. 1950, came into open Court the Grand Jury heretofore impaneled, and the roll being called, and a quorum thereof being present, they, through their foreman, J. H. Frost, Jr., presented to the Court the following indictment:

No. 16822 The United States vs. Louise Virginia Smith, an indictment for falsely forging the name of the payee on U. S. Treasurer check and uttering as true said check knowing the endorsement to be forged with intent to defraud, which was received by the Court and ordered to be filed and docketed.

[File Endorsement Omitted.]

3

IN UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

San Antonio Division

No. 16822

UNITED STATES OF AMERICA

vs.

LOUISE VIRGINIA SMITH

(18 U. S. C., Sec. 73)

INDICTMENT

[Filed Oct. 2, 1950]

The grand jury charges:

On or about July 1, 1947, in Bexar County, Texas, within the San Antonio Division of said district, LOUISE VIRGINIA SMITH falsely made and forged the name of the payee, to wit, John C. Roberts, upon the back of a check drawn on the Treasurer of the United States, for the purpose of obtaining and receiving from the United States a certain sum of money, to wit, Ninety Dollars ($90.00), which said check, with its forged endorsement, is described as follows:

> Check drawn on the Treasurer of the United States, No. 11,368,207, dated June 30, 1947, issued at Dallas, Texas, over symbol 311, payable to the order of John C. Roberts.

SECOND COUNT

At the time and place and within the jurisdiction, all as described in the first count hereof, LOUISE VIRGINIA SMITH uttered as true the check described in the first count hereof, then knowing the endorsement thereon to be forged, with the intent to defraud the United States.

A True Bill

/s/ J. H. FROST, Jr.,
Foreman.

/s/ H. W. Moursund,
United States Attorney.

[ENDORSED]: No. 16822 United States District Court Western District of Texas San Antonio Division The United States vs. Louise Virginia Smith Indictment Charge Vio. Sec. 73, Title 18, USC. A true bill /s/ J. H. Frost, Jr., Foreman of the Grand Jury /s/ H. W. Moursund, United States Attorney.

[File Endorsement Omitted.]

IN UNITED STATES DISTRICT COURT

[Title Omitted]

Motion to Dismiss

[Filed Oct. 4, 1950]

Now comes the defendant in the above entitled and numbered cause, and moves the court to dismiss the indictment heretofore returned against her in this cause, for the following reasons, to-wit:

1. That said indictment shows on its face that the offense charged against this defendant was committed more than three years prior to the return of the indictment, and that such offense is barred by limitation.

2. That said indictment shows on its face that the offense charged against this defendant was barred by the statute of limitation of three years, and no facts are alleged which would show that such statute has been suspended as to the particular offense charged in each count of the indictment so as to take it out of said three years statute.

3. That said indictment is insufficient in both counts in that three years had elapsed since the commission of the alleged offense charged in the indictment, and that the offense charged did not come within the provisions of sec. 3287 of Title 18, providing for the suspension of limitation in certain character of cases where the offense was committed while the United States was at war.

Wherefore, defendant prays that upon a hearing hereof, that this motion be granted and that said indictment be dismissed.

/s/ Leonard Brown,
/s/ Archie S. Brown,
Attorneys for Defendant.

[File Endorsement Omitted.]

10 IN UNITED STATES DISTRICT COURT

[TITLE OMITTED]

ORDER SUSTAINING MOTION TO DISMISS

[Filed Oct. 18, 1950]

On this the 5th day of October, A. D. 1950, came on to be heard in the above entitled and numbered cause, the motion of the defendant to dismiss the indictment heretofore returned against her on the ground that more than three years has elapsed from the time of the commission of the offense as alleged in the indictment and the return of the indictment, and the court, after considering the
11 argument of counsel for the defendant, and the Government, is of the opinion that the motion of the defendant should be sustained.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the indictment in this case be and the same is hereby dismissed, and the defendant discharged.

/s/ BEN H. RICE, Jr.,
Judge.

O. K.

/s/ Leonard Brown,
att'y for deft.

Approved as to form.

12 /s/ H. W. Moursund,
U. S. Attorney.

[File Endorsement Omitted.]

IN UNITED STATES DISTRICT COURT 13

[TITLE OMITTED]

ORDER AMENDING ORDER OF DISMISSAL

[Filed Oct. 30, 1950]

The Order Dismissing the indictment in the above entitled and numbered cause is hereby amended by striking the second word thereof, "this," and adding the following immediately above the signature line:

"DONE AT SAN ANTONIO, TEXAS, this the 16th day of October, A. D. 1950." 14

DONE AT SAN ANTONIO, TEXAS, this the 30th day of October, A. D. 1950.

/s/ BEN H. RICE, Jr.,
United States District Judge.

[Filé Endorsement Omitted.]

15

16 IN UNITED STATES DISTRICT COURT

[TITLE OMITTED]

PETITION FOR REHEARING

[Filed Nov. 9, 1950]

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the United States of America, plaintiff in the above styled and numbered cause, and moves the court to reconsider its judgment dismissing the indictment herein and for cause shows:

1. This indictment filed October 2, 1950, charges in Count One
17 that defendant forged the name of the payee on the back of a Treasury check for the purpose of obtaining money from the United States, and in Count Two uttering said check knowing the endorsement to be forged, with intent to defraud the United States, both offenses allegedly having been committed July 1, 1947.

In *Bailey v. United States*, 13 F. 2d 325 (9 Cir.), the Second Count at least of a similar indictment was held to charge fraud and therefore to be within the old statute imposing a six-year statute of limitations in fraud cases.

2. Title 18, United States Code, 590(a), enacted August 24, 1942, suspended the statute of limitations in fraud cases until three years after termination of hostilities, such termination being accomplished by Presidential Proclamation No. 2714 at 12:00 Noon, December 31, 1946. Section 21 of Public Law 772, the Act revising
18 the Criminal Code, which section may be found at page 2412, United States Code Congressional Service, West Publishing Company, 1948, repeals among others 18 USC 590(a) and provides: "Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal." In *United States v. Choy Kum*, 91 Fed. Supp. 769, the District Court held that prosecution for a fraud offense committed in 1947 had not been barred by the three-year statute of limitations by the time the indictment was returned in 1950, and more than three years after the offense was committed, because the suspension act 18 USC 590(a) actually suspended the statute of limitations until December 31, 1949. Therefore the statute of limitations for the offenses charged herein was suspended from commencing to run until December 31, 1949.

WHEREFORE, premises considered, the United States of America respectfully requests the court to set aside its judgment dismissing the indictment in this case and to reinstate such indictment and to fix bail for the defendant, bond for bail to be presented to any United States Commissioner for approval.

H. W. MOURSUND,
United States Attorney,

/s/ WM. H. RUSSELL, Jr.,
/t/ WM. H. RUSSELL, Jr.,
Assistant U. S. Attorney,

Attorneys for Plaintiff.

20

Copy of this Petition for Rehearing was mailed to Leonard Brown, Esq., National Bank of Commerce Building, San Antonio, Texas, November 9, 1950.

/s/ WM. H. RUSSELL, Jr.
/t/ WM. H. RUSSELL, Jr.

I believe that the foregoing Petition for Rehearing is good in point of law, and it has not been filed for the purpose of delay.

/s/ WM. H. RUSSELL, Jr.,
/t/ WM. H. RUSSELL, Jr.,
Assistant U. S. Attorney.

21

[File Endorsement Omitted.]

22 IN UNITED STATES DISTRICT COURT

[TITLE OMITTED]

DEFENDANT'S REPLY TO PETITION FOR REHEARING

[Filed Nov. 14, 1950]

Now comes the defendant, Louise Virginia Smith, in the above styled and numbered cause, and in reply to the government's petition for a reconsideration of the Court's judgment dismissing the indictment herein, shows as follows:

1. The judgment of this Court dismissing the indictment should not be set aside for the reason that the offense was barred by the 23 Statute of Limitations at the time the indictment was returned and the prosecution commenced.

2. The government contends in its motion that the prosecution is not barred because of the operation of the Suspension Act, 18 USC 590(a), and relies upon the case of *United States v. Choy Kum, et al.*, 91 F. Supp. 769, in support of this contention. While it is true that the indictment in the *Choy Kum* case charged the commission of an offense after the cessation of hostilities as does the indictment in the present case, a careful reading of the *Choy Kum* case will reflect that the contention raised by the defendant, Choy Kum, in his motion to dismiss was that fraud was not an essential ingredient of the offense charged and that for that reason the Suspension Act should not apply to the offense alleged in the indictment. Nowhere in the opinion of the District Judge 24 is there anything which would indicate that the defendant raised the point in that case which was raised by the defendant in the instant case, namely: *that the Suspension Act does not apply to offenses committed after the cessation of hostilities.* This is borne out by the fact that the cases cited by the District Judge in the *Choy Kum* case in support of his decision were in each instance cases in which the question raised was as to whether or not fraud was an essential element of the offense charged, and that in each of these cases the offense was alleged to have been committed *prior* to the cessation of hostilities.

3. The defendant, Louise Virginia Smith, submits that the case of *United States v. Gottlieb*, 165 F. 2d 360, by the Second Circuit, the case which was the primary basis for the decision in the *Choy Kum* case, fully supports her contention in her motion to dismiss

the indictment in the instant case. In the *Gottlieb* case we find on page 363 of the opinion by Judge L. Hand, the following expression regarding the Suspension Act:

> "Besides, the purpose of the amendment was not to let crimes pass unpunished *which had been committed in the hurly-burly of war* . . ." (Italics ours.)

To the same effect is the very language of the Suspension Act itself, which is as follows:

> "*When the United States is at war*, the running of any statute of limitations applicable to any offense (1) involving fraud . . . shall be suspended until three years after the termination of hostilities . . ."

In order to support the Government's contention in its motion, the Suspension Act would have to be rewritten to provide as follows:

> "When the United States is at war and for three years after the termination of hostilities, the running of any statute of limitations applicable to any offense (1) involving fraud . . . shall be suspended."

As the rewriting of the law would effect a basic change in the meaning of the law, so does the contention of the Government in its motion do violence to the plain import of the language used by the Congress in enacting the Suspension Act in question. Under the Suspension Act the Statute of Limitations is suspended as to what offenses? If the statute means what it says, clearly it is confined to offenses committed prior to the enactment of the statute, and during the war until the termination of hostilities. In other words, if an offense had been committed prior to the enactment of the Act and a war was in progress when the Suspension Act was passed, the running of the Statute of Limitations would immediately be suspended as to all offenses committed prior to the enactment of the statute and not yet barred by limitations. What other offenses would come under the operation of the Suspension Act? Clearly only those committed when the United States is at war. To hold that the Act suspended the Statute of Limitations as to offenses committed after the termination of hostilities, would certainly do violence to the plain language of the Act, "When the United States is at war." This is the contention of the defendant in the instant case. It was certainly the conclusion of Judge Learned Hand in the *Gottlieb* case, and it must have been the basis of the ruling

28 *Answer to Defendant's Reply to Petition for Rehearing*

of this Court in the instant case in originally sustaining the motion to dismiss the indictment.

4. The defendant submits that the foregoing expression in the *Gottlieb* case, together with the plain import of the language used in the Suspension Act itself, compels the conclusion that this Act does not apply to offenses committed *after* the termination of hostilities.

WHEREFORE, premises considered, the defendant respectfully requests the Court to deny the Government's motion to set aside the order dismissing the indictment in this cause.

29 /s/ LEONARD BROWN,
/s/ ARCHIE S. BROWN,
Attorneys for Defendant.

A copy of this reply has been personally delivered to the United States District Attorney for the Western District of Texas, Federal Building, San Antonio, Texas, on 14 November, 1950.

/s/ ARCHIE S. BROWN.

[File Endorsement Omitted.]

30

IN UNITED STATES DISTRICT COURT

[TITLE OMITTED.]

ANSWER TO DEFENDANT'S REPLY TO PETITION FOR REHEARING

[Filed Dec. 18, 1950]

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the United States of America in the above styled and numbered cause, and in answer to defendant's reply to petition for rehearing respectfuliy shows as follows:

The statute cited in the defendant's reply is 18 USC 3287, the revision of 1948. The statute mainly relied upon by the government is 18 USC 590(a), the Act of August 24, 1942, as amended, the pertinent provisions of which read:

> "The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States * * * shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President * * *"

The hostilities were proclaimed terminated as of December 31, 1946, and in the plain words of the statute limitations were suspended until three years thereafter, i. e., until December 31, 1949. 32
In other words, as to the offense charged in the indictment there was no statute of limitations in existence until December 31, 1949, unless it might be said that 18 USC 3287 which became effective September 1, 1948, repealed the old act and that limitations commenced to run on that date. Even if this view be accepted, the three-year statute of limitations commencing to run September 1, 1948, would not have fully run upon the date the instant indictment was returned, being October 5, 1950.

WHEREFORE, the United States of America prays as in its petition for rehearing heretofore filed herein.

H. W. MOURSUND,
United States Attorney,

By /s/ WM. H. RUSSELL, Jr., 33
/t/ WM. H. RUSSELL, Jr.,
Assistant U. S. Attorney.

Copy of this Answer has been mailed to Leonard Brown, Esq., and Archie Brown, Esq., Attorneys for Defendant, National Bank of Commerce Bldg., San Antonio, Texas.

/s/ WM. H. RUSSELL, Jr.
/t/ WM. H. RUSSELL, Jr.

[File Endorsement Omitted.]

34

IN UNITED STATES DISTRICT COURT

[TITLE OMITTED]

ORDER OVERRULING GOVERNMENT'S PETITION FOR REHEARING

[Filed Jan. 4, 1951]

The indictment in the instant case, returned and filed October 2, 1950, charges violations of 18 USCA 73 (1946 Ed.) in the First Count that on or about July 1, 1947, Louise Virginia Smith falsely made and forged the name of the payee upon the back of a check drawn on the Treasurer of the United States for the purpose of obtaining and receiving from the United States the sum of $90.00, 35 and in the Second Count with uttering as true the check described in the First Count, then knowing the endorsement thereon to be forged, with intent to defraud the United States.

The defendant plead the three-year statute of limitation and further that no facts are alleged in the indictment to show that the statute has been suspended as to the particular offense charged in each count of the indictment, i. e., the indictment does not allege fraud or attempted fraud.

The government relied upon the Suspension Act, 18 USC 590(a), being the Act of August 24, 1942, as amended, the pertinent provisions of which read:

> "The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States 36 • • • shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President • • • "

The Second Count of the indictment, at least, charges fraud and is, therefore, within the terms of paragraph (1) of the Suspension Act, 18 USC 590(a). See *Bailey v. United States*, 13 F. 2d 325, 9 Cir.

In view of the disposition to be made of this petition, it is necessary to determine whether or not the First Count of the indictment charges fraud and is, therefore, within the terms of paragraph (1) of the Suspension Act.

The Court found that the three-year statute of limitations is applicable to the offenses charged in the indictment in this case and ordered the same dismissed and the defendant discharged; there-

after the government filed its motion for rehearing praying that the order dismissing the indictment be set aside and the same be reinstated.

The Court is of the opinion that the Suspension Act, 18 USC 590(a), being the Act of August 24, 1942, as amended in 1944, applies only to offenses committed during the time prior to the termination of hostilities. Hostilities were proclaimed terminated as of December 31, 1946. The alleged offense is charged to have occurred July 1, 1947, and the three-year statute of limitations barred prosecution of this offense three years thereafter. "* * * The purpose of the amendmnt (18 USC 590[a]) was not to let crimes pass unpunished which had been committed in the hurly burly of war * * *." *United States v. Gottlieb*, 165 F. 2d 360, page 368.

The petition for rehearing is denied. 38

DONE AT San Antonio, TEXAS, this the 3 day of January, A. D. 1951.

/s/ BEN H. RICE, Jr.,
United States District Judge.

[File Endorsement Omitted.]

IN THE UNITED STATES DISTRICT COURT

[TITLE OMITTED.]

NOTICE OF APPEAL

[Filed Feb. 1, 1951] 39

The United States hereby appeals to the Supreme Court of the United States from the order, as amended, of the United States District Court for the Western District of Texas, San Antonio Division, entered October 15, 1950, petition for rehearing denied January 3, 1951, dismissing the indictment charging the defendant with forgery and false uttering in violation of 18 U.S.C. (1946 Ed.) 73.

Dated, February 1, 1951.

/s/ PHILIP B. PERLMAN,
/t/ PHILIP B. PERLMAN,
Solicitor General,
Department of Justice,
Washington, D. C.

[File Endorsement Omitted.]

40 IN UNITED STATES DISTRICT COURT

[TITLE OMITTED.]

ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL

[Filed March 5, 1951.]

On this day came on to be heard the motion by appellant to extend the time for filing of record on appeal in the above styled and numbered cause for a period of thirty days from March 12, 1951, and the Court having heard and considered the same, finds that for cause shown the motion for extension of time for filing the record on appeal should be granted.

41 IT IS ACCORDINGLY ORDERED that time for filing record on appeal herein be and the same is extended to thirty days after March 12, 1951.

DONE: This 5th day of March, A. D. 1951.

/s/ BEN H. RICE, JR.,
United States District Judge.

[File Endorsement Omitted.]

42

IN UNITED STATES DISTRICT COURT 43

[TITLE OMITTED.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

[Filed March 5, 1951]

Now comes the United States of America, appellant in the above styled and numbered cause, and hereby designate the contents of the record on appeal as follows:

1. The presentment
2. The indictment
3. Defendant's Motion to Dismiss the Indictment
4. Order Dismissing the Indictment
5. Order Amending Order of Dismissal 44
6. Petition for Rehearing
7. Defendant's Reply to Petition for Rehearing
8. Answer to Defendant's Reply to Petition for Rehearing
9. Order Overruling Government's Petition for Rehearing
10. Notice of Appeal
11. Statement as to Jurisdiction
12. Notification to Appellee of Appeal
13. Order Extending Time for Filing Record on Appeal
14. This Designation of Record on Appeal 45

Respectfully requested,

/s/ H. W. MOURSUND,
/t/ H. W. MOURSUND,
United States Attorney,
Attorney for Appellant.

I certify that a copy of the foregoing was mailed defendant, this the 2nd day of March, A. D. 1951.

/s/ WM. H. RUSSELL, JR.,
/t/ WM. H. RUSSELL, JR.,
Assistant U. S. Attorney.

[File Endorsement Omitted.]

46 CLERK'S CERTIFICATE

[Clerk's Certificate to foregoing transcript omitted in printing.]

SUPREME COURT OF THE UNITED STATES

[TITLE OMITTED.]

ORDER NOTING PROBABLE JURISDICTION—APRIL 16, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

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IN THE SUPREME COURT OF THE UNITED STATES

[TITLE OMITTED.]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF RECORD

[Filed May 3, 1951]

Pursuant to Rule 13, paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that the Wartime Suspension of Limitations Act (section 1 of the Act of August 24, 1942, 56 Stat. 747, as amended by the Act of July 1, 1944, section 19[b], 58 Stat. 667; revised in 1948 as permanent legislation, 18 U.S.C. 3287) "applies only to offenses committed during the time prior to the termination of hostilities."

48

2. The District Court erred in granting the motion to dismiss the indictment.

Appellant deems the entire record, as filed in the above-entitled case, necessary for the consideration of the points relied on.

PHILIP B. PERLMAN,
Solicitor General.

[File Endorsement Omitted.]

U. S. GOVERNMENT PRINTING OFFICE: 1951